

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Craig Anderson	Team: Squad #7	CCRB Case #: 201500974	<input checked="" type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input checked="" type="checkbox"/> Injury
Incident Date(s) Saturday, 02/01/2014 6:00 PM	Location of Incident: § 87(2)(b) and the 71st Precinct stationhouse	Precinct: 70	18 Mo. SOL 8/1/2015	EO SOL 8/1/2015	
Date/Time CV Reported Fri, 01/30/2015 11:02 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Wed, 02/11/2015 11:01 AM		

Complainant/Victim	Type	Home Address
§ 87(2)(b)	§ 87(2)(b)	§ 87(2)(b)

Witness(es)	Home Address
§ 87(2)(b)	§ 87(2)(b)

Subject Officer(s)	Shield	TaxID	Command
1. POM Tracey Duncan	08218	938409	071 PCT
2. LT Luis Machado	00000	940403	071 PCT
3. Officers			

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Justin Smith	06812	947497	071 PCT
2. POM Ronald Sanchez	22769	947454	071 PCT
3. POF Christine Damico	04628	950269	071 PCT
4. SGT David Rodgers	02827	929058	071 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Tracey Duncan	Force: § 87(2)(b) in Brooklyn, PO Tracey Duncan struck § 87(2)(b) with an asp.	§ 87(2)(b)
B.LT Luis Machado	Abuse: At the 71st Precinct stationhouse, Lt. Luis Machado did not obtain medical treatment for § 87(2)(b)	§ 87(2)(b)
C.LT Luis Machado	Discourtesy: At the 71st Precinct stationhouse, Lt. Luis Machado spoke discourteously to § 87(2)(b)	§ 87(2)(b)
D. Officers	Abuse: At the 71st Precinct stationhouse, officers did not obtain medical treatment for § 87(2)(b)	§ 87(2)(b)

Case Summary

On February 1, 2014 at approximately 6 p.m., Lt. Luis Machado, PO Tracey Duncan, and PO Christine Damico of the 71st Precinct responded to the barbershop located at § 87(2)(b) Brooklyn after receiving a complaint from § 87(2)(b) that her boyfriend, § 87(2)(b) assaulted her and stole her phone. § 87(2)(b) § 87(2)(b) reportedly told the officers that § 87(2)(b) worked at the barbershop, often carried a gun, and was likely to resist arrest because he was facing seven years in prison for a different offense (see Board Review 16).

Lt. Machado approached § 87(2)(b) first and attempted to handcuff him. § 87(2)(b) reportedly swung his arms to avoid being handcuffed and moved toward the back of the shop. Lt. Machado pursued him and took him to the floor. § 87(2)(b) resisted giving Lt. Machado his hands and grabbed PO Damico's handcuffs when she attempted to handcuff him. As Lt. Machado wrestled with § 87(2)(b) PO Duncan struck § 87(2)(b) with an asp eight or more times, primarily on his legs. § 87(2)(b) also alleged that he was struck in the head. (**Allegation A**). After this, PO Justin Smith and PO Ronald Sanchez arrived to assist and handcuffed § 87(2)(b) PO Smith and PO Sanchez transported him to the 71st Precinct stationhouse.

At the stationhouse, § 87(2)(b) realized he was bleeding from his head and legs and asked to go to the hospital. Lt. Machado allegedly told him to "shut the fuck up" (**Allegations B and C**). § 87(2)(b) asked numerous other officers to go to the hospital; they did not respond to his requests (**Allegation D**). An Emergency Medical Technician (EMT) came to the stationhouse and wrapped the cuts on § 87(2)(b)'s legs, but he was not taken to the hospital until § 87(2)(b), after he had been taken to Brooklyn Central Booking. At § 87(2)(b), § 87(2)(b) received one staple for a laceration on the left side of his scalp and numerous stitches for cuts on his legs (see medical records folder).

§ 87(2)(b)'s coworker at the barbershop, recorded a video of the incident in the barbershop (see Board Review 1 and 2 for the video and Board Review 3 and 4 for summaries). IAB also conducted an investigation into the incident (see Board Review 5 for the IAB worksheets and Board Review 6 for a summary).

Mediation, Civil, and Criminal Histories

This case was ineligible for mediation because § 87(2)(b) filed a federal lawsuit about this incident, seeking \$175,000 (see Board Review 7) [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b).

Civilian and Officer CCRB Histories

- This is the first CCRB complaint filed by § 87(2)(b)
- PO Duncan has been a member of the NYPD for nine years. There are six prior CCRB complaints against him, five of which include force allegations. Three force allegations were exonerated and two were unsubstantiated.
- Lt. Machado has been a member of the NYPD for nine years. There are nine prior CCRB complaints against him, one of which (200715399) resulted in a substantiated force allegation. The CCRB recommended charges, but in March 2009, the NYPD instituted instructions. None of his prior complaints include refusal to obtain medical treatment

allegations, but five include discourtesy allegations. In case 200803346, Lt. Machado was alleged to have told a civilian to “shut the fuck up,” § 87(2)(g)

Findings and Recommendations

Potential Issues

§ 87(2)(g)

§ 87(2)(b) went out of business before the CCRB received this case. Attempts to obtain a certified copy of § 87(2)(b)'s medical records have thus far been unsuccessful. A second subpoena was sent to the storage facility responsible for § 87(2)(b) records, and their response will be added to the case file upon receipt. § 87(2)(b)'s attorney provided an uncertified copy of the records (see medical records folder).

Allegations Not Pleaded

- § 87(2)(g)

Explanation of Subject Officer Identification

PO Duncan acknowledged that he hit § 87(2)(b) with an asp and was the only officer to do so.

§ 87(2)(g)

§ 87(2)(b) said the officer who told him to “shut the fuck up” when he requested medical attention was the plainclothes officer who initially approached him in the barbershop. § 87(2)(g)

§ 87(2)(g)

§ 87(2)(b) said he requested medical attention from numerous other officers, but he could not identify or describe them or say exactly how many he requested it from. Although he initially said he requested it from the officers who transported him to the stationhouse – identified by the investigation as PO Sanchez and PO Smith – he later said he was not sure if he requested treatment from them. PO Sanchez, PO Smith, PO Damico, PO Duncan, Lt. Machado, and Sgt. David Rodgers were all interviewed and denied that § 87(2)(b) requested medical treatment from them or any other officers. § 87(2)(g)

Recommendations

Allegation A – At § 87(2)(b) in Brooklyn, PO Tracey Duncan struck § 87(2)(b) with an asp.

It is undisputed that PO Duncan struck § 87(2)(b) with an asp. There are eight asp-strikes visible in the video: seven landed on § 87(2)(b)'s legs and one landed outside of camera-view. After the

latter strike, a man in the background yelled, “Oh, he hit him in the face!” § 87(2)(b) said he was struck “a couple of times” in the head (see interview with § 87(2)(b) and § 87(2)(b) said PO Duncan hit him once in the head (see Board Review 9). Lt. Machado, PO Duncan, and PO Damico all denied that PO Duncan struck § 87(2)(b) in the face or head. PO Sanchez and PO Smith said they were not present when PO Duncan used his asp, which was confirmed by the video (see officer interview reports).

PO Duncan said he first used his asp about one or two minutes after the start of the struggle, because § 87(2)(b) continually pulled his arms away when the officers attempted to handcuff him. PO Duncan never saw § 87(2)(b) attempt to strike an officer or resist in any additional way. PO Duncan could not estimate the number of times he struck § 87(2)(b). He said he first struck him several times, then stopped and tried again to help Lt. Machado handcuff § 87(2)(b). After he was again unsuccessful in handcuffing § 87(2)(b) PO Duncan struck him several more times. § 87(2)(b)'s behavior did not change after being struck. In PO Duncan's words, “The asp wasn't very effective in trying to get him to comply to stop resisting.” PO Duncan denied seeing any officer or object hit § 87(2)(b)'s head during the struggle.

In his CCRB interview, Lt. Machado said he never knew PO Duncan used his asp until he saw the video during his IAB interview, because he had his back to PO Duncan during the incident. In his IAB interview, however, Lt. Machado said he saw PO Duncan using the asp after § 87(2)(b) broke out of Lt. Machado's grip and tried to roll onto his side (see Board Review 10). Lt. Machado said he never told PO Duncan to use the asp, but never told him not to. The only order he gave to PO Duncan and PO Damico during the struggle was to help handcuff § 87(2)(b) which he repeated several times. When asked in his CCRB interview if § 87(2)(b) ever hit his head during the struggle, Lt. Machado initially said § 87(2)(b) hit his head on the floor when they fell. When pressed on this point, however, Lt. Machado said he closed his eyes when they fell and he was only guessing about § 87(2)(b) hitting his head. Lt. Machado said § 87(2)(b) was swinging his arms, but did not know if § 87(2)(b) ever struck him. Lt. Machado was mistakenly struck in the shoulder by PO Duncan's asp, but did not seek medical treatment for the resulting bruise.

PO Damico said that § 87(2)(b) did not attempt to strike any officers, but that he flailed his arms and pushed away from them to avoid being handcuffed. PO Damico attempted to handcuff § 87(2)(b) but dropped the cuffs. § 87(2)(b) grabbed them and held them underneath his body. PO Damico took her asp out, but did not hit § 87(2)(b). She never saw any sort of trauma to § 87(2)(b)'s head.

Officers must use the “minimum necessary force” when conducting an arrest. Patrol Guide, Section 203-11 (see Board Review 11).

§ 87(2)(g)

In the video, PO Duncan hit § 87(2)(b) on the legs seven times. The video did not capture the entire struggle. In his interview, PO Duncan said that at one point he stopped hitting § 87(2)(b) tried to handcuff him again, and resumed hitting him after he was unsuccessful. No such pause is seen in the video, § 87(2)(g)

§ 87(2)(g)

§ 87(2)(b), § 87(2)(g)

Allegation B – At the 71st Precinct stationhouse, Lt. Luis Machado did not obtain medical treatment for § 87(2)(b)

Allegation C – At the 71st Precinct stationhouse, Lt. Luis Machado spoke discourteously to § 87(2)(b)

§ 87(2)(b) said that he saw Lt. Machado walk by his holding cell around 8 or 9 p.m. and asked him to go to the hospital. Lt. Machado allegedly told him to “shut the fuck up” and walked away. An EMT came to the stationhouse and wrapped § 87(2)(b)'s legs, but he did not get any other treatment until he went to the hospital the next morning from Central Booking.

Lt. Machado denied that § 87(2)(b) ever requested medical attention in his presence and denied telling him to “shut the fuck up” or using any obscenities toward him. All officers interviewed said they did not remember § 87(2)(b) requesting medical attention and did not remember Lt. Machado telling him to “shut the fuck up” or otherwise refusing him treatment. Lt. Machado did not recall whether EMTs came to the stationhouse to treat § 87(2)(b).

The IAB file contained a recording of a phone interview between Sgt. David DePalma and § 87(2)(b), § 87(2)(b)'s girlfriend (see Board Review 12). She was still in the stationhouse when § 87(2)(b) was brought in, and saw an ambulance arrive. She said that a short Hispanic officer in plainclothes – presumably referring to Lt. Machado, who is Hispanic and 5’4” tall – told the EMT that § 87(2)(b) was fine and to only examine PO Duncan, who injured his hand. PO Duncan said in his interview that he was not treated by the EMT because he went to the hospital shortly after going back to the stationhouse.

Two Medical Treatment of Prisoner Reports (MTPRs) were prepared for § 87(2)(b). The first was signed by Lt. Machado at § 87(2)(b). The report notes minor lacerations and swelling to § 87(2)(b)'s head and legs. An ambulance call was noted, and the form states that § 87(2)(b) refused medical attention. § 87(2)(b) signed the form (see Board Review 13).

The second MTPR was signed by Sgt. William Groneman at Brooklyn Central Booking. It notes that § 87(2)(b) was taken to the hospital § 87(2)(b) for lacerations to his head and legs (see Board Review 14).

Although § 87(2)(b)'s signature on the first MTPR suggests that he did initially refuse medical treatment, § 87(2)(g) he was eventually hospitalized. The command log indicates that § 87(2)(b) did not leave the 71st Precinct stationhouse until 5:25 a.m. on February 2, 2015 – approximately ten hours after Lt. Machado signed the first MTPR (see Board Review 15). Thus, § 87(2)(b)'s signature on the first MTPR does not disprove his claim that he asked to go to the hospital while at the 71st Precinct.

Lt. Machado said in his IAB interview that he did not leave the 71st Precinct stationhouse until 9:30 p.m., so § 87(2)(b)'s claim that he asked him for medical treatment around 8 or 9 p.m. is plausible. However, Lt. Machado said that he had little interaction with § 87(2)(b) at the stationhouse because he was preparing for a different operation. § 87(2)(g)

§ 87(2)(b)

§ 87(2)(b)

§ 87(2)(b)

Allegation D – At the 71st Precinct stationhouse, officers did not obtain medical treatment for § 87(2)(b)

As detailed in the officer identification section, § 87(2)(b) was unable to describe or identify the other officers he requested medical treatment from, and none of the officers interviewed recalled § 87(2)(b) requesting medical treatment. § 87(2)(b) could only say that he requested treatment from the officers who escorted him to the holding cells; none of the officers interviewed recalled who did this. § 87(2)(g)

§ 87(2)(g)

Pod: 7

Investigator: _____
Signature Print Date

Supervisor: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date